

**BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD
OF THE STATE OF CALIFORNIA**

AB-8684

File: 42-336512 Reg: 05061227

MARIA G. GARCIA, dba Las Palmas Bar & Grill
9125 Woodman Avenue, Arleta, CA 91331,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Ronald M. Gruen

Appeals Board Hearing: June 5, 2008
Los Angeles, CA

ISSUED SEPTEMBER 23, 2008

Maria G. Garcia, doing business as Las Palmas Bar & Grill (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which revoked her license for employing or permitting Sandra Calderas to solicit drinks under a commission, percentage, salary, or other profit-sharing plan, and for employing or knowingly permitting Sandra Calderas to loiter in the premises for the purpose of soliciting patrons to buy alcoholic beverages for her, in violation of Business and Professions Code² sections 24200.5, subdivision (b), and 25657, subdivision (b).

Appearances on appeal include appellant Maria G. Garcia, appearing through her counsel, Armando H. Chavira, and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

¹The decision of the Department, dated February 1, 2007, is set forth in the appendix.

²Unless otherwise indicated, statutory references are to the Business and Professions Code.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale beer and wine public premises license was issued in December 1997. In November 2005 the Department filed an accusation against appellant charging that, on September 16, 2005, she allowed drink solicitation activities (counts 1, 2, and 3, alleging violations of §§ 24200.5, subd. (b), and 25657, subd. (b)) and employed, and allowed to remain in the premises, an underage person (counts 4 and 5, alleging violations of §§ 25663, subd. (a), and 25665).

At the administrative hearing held on August 8 and December 5, 2006, documentary evidence was received and testimony concerning the violations charged was presented. The documentary evidence showed that at the time of the violations alleged in the present accusation appellant was operating under a stayed revocation resulting from drink solicitation activities. Subsequent to the hearing, the Department issued its decision which determined that the violations alleged in counts 1, 2, and 3 were established, but those in counts 4 and 5 were not. Counts 4 and 5 were dismissed, and the license was ordered revoked based on counts 1, 2, and 3, and appellant's prior discipline.

Appellant has filed an appeal contending that the decision is not supported by substantial evidence.

DISCUSSION

Appellant submitted to the Appeals Board an opening brief presenting her argument regarding the alleged lack of substantial evidence. The Department's reply brief did not address the issue raised by appellant. The body of the reply brief stated, in its entirety:

The Department does not concede any of the issues raised by the licensee in her opening brief. However, a review of the file indicates that the matter should be remanded to the Department for disposition pursuant to *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board (Quintanar)*.¹

¹40 Cal. 4th 1, 50 Cal. Rptr. 3d 585 (2006).

Appellant has not responded to this submission by the Department. Since appellant has raised no objection, we believe it is appropriate to take the Department at its word, and remand the matter to the Department for further proceedings pursuant to the *Quintanar* case.

ORDER

This matter is remanded to the Department for an evidentiary hearing concerning possible ex parte communications by the Department.³

FRED ARMENDARIZ, CHAIRMAN
SOPHIE C. WONG, MEMBER
TINA FRANK, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

³This order of remand is filed in accordance with Business and Professions Code section 23085, and does not constitute a final order within the meaning of Business and Professions Code section 23089.